

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **August 9, 2005**

AGENDA ITEM NO.: 5

CONSENT: **X**

REGULAR:

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Central Virginia Community Services FY 2006 Performance Contract**

RECOMMENDATION:

Adopt resolution approving the Central Virginia Community Services FY 2006 Performance Contract

SUMMARY:

Section 37.1-198(B)(ii) of the Code of Virginia requires City Council approval of the Central Virginia Community Services FY 2006 Performance Contract. Localities are asked to consider such action by September 15; and if approval is not received by then, the FY 2006 Performance Contract will be deemed approved by the State.

PRIOR ACTION(S):

None

FISCAL IMPACT:

None

CONTACT(S):

L. Wayne Trent 847-8050

ATTACHMENT(S):

Resolution
FY 2006 Performance Contract

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED That the Lynchburg City Council does hereby approve the Central Virginia Community Services FY 2006 Performance Contract as required by Section 37.1-198(B)(ii) of the Code of Virginia.

Adopted:

Certified:

Clerk of Council

090P

CENTRAL VIRGINIA
**COMMUNITY
SERVICES**
Behavioral Healthcare

ADMINISTRATION

2241 LANGHORNE ROAD, LYNCHBURG, VA 24501
434-847-8050 • TDD: 434-847-8062 • FAX: 434-847-6099

June 10, 2005

Mr. Kimball Payne, City Manager
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

Dear Kim:

Enclosed please find a copy of the Central Virginia Community Services FY 2006 Performance Contract with the Department of Mental Health, Mental Retardation and Substance Abuse Services.

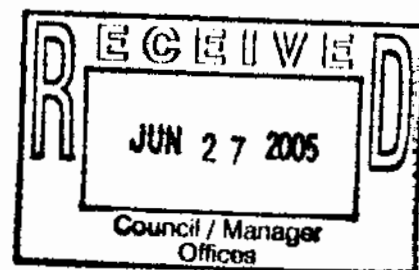
The contract requires us to seek formal approval of this document each year from the participating local governments that we serve. Localities are asked to take a formal action of approval and to inform the CSB of the type of action - ordinance, resolution, or motion and voice vote. Localities are asked to consider such action by September 15; if approval is not received by then, it will be "deemed" approved by the State.

Thank you for your help in this matter. Please call me with any questions you may have.

Sincerely,



L. Wayne Trent, Director
Administration & Finance



"Quality Care...Changed Lives!"

Exhibit A
Central Virginia

Consolidated Budget

Revenue Source	Mental Health	Mental Retardation	Substance Abuse	TOTAL
State Funds	273,356	313,194	940,670	1,527,220
State Restricted Funds	1,703,195	0	235,000	1,938,195
Local Matching Funds	531,026	196,811	100,759	828,596
Fee Revenues	12,569,564	5,014,520	1,194,553	18,778,637
Federal Funds	186,604	0	1,993,646	2,180,250
Other Funds	1,254,304	359,576	548,325	2,162,205
State Retained Earnings	20,768	93,428	0	114,196
Federal Retained Earnings	0		0	0
Other Retained Earnings	0	0	0	0
Subtotal Funds	16,538,817	5,977,529	5,012,953	27,529,299
State Funds One-Time				
State Restricted Funds One-Time				
Federal Funds One-Time	0			0
Subtotal One-Time Funds	0			0
TOTAL ALL FUNDS	16,538,817	5,977,529	5,012,953	27,529,299
Expenses	16,538,817	5,977,529	5,012,953	27,529,299

Local Match Computation

Total State Restricted and State Fund (Less DAP, Net Regional DAP and Net Reinvestment)	2,825,579
Local Matching Funds	828,596
Total State and Local	3,654,175
% Local Match	22.68%

Fees Transferred

TO	FROM	NET
-448,457	448,457	0

Administrative & Management Expenses

Total Admin. Expenses	2,800,304
Total Expenses	27,529,299
% Administration	9.45%

FY 2006 Community Services Performance Contract

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FY 2006 Community Services Performance Contract

1. Contract Purpose

- a. Title 37.1 of the *Code of Virginia* establishes the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (the Department) to ensure delivery of publicly funded services and supports to individuals with mental illnesses, mental retardation, or substance use disorders and authorizes the Department to fund community mental health, mental retardation, and substance abuse services.
- b. Sections 37.1-194 through 202.1 of the *Code of Virginia* require cities and counties to establish community services boards for the purpose of providing local public mental health, mental retardation, and substance abuse services; and §§ 37.1-242 through 253 authorize certain cities or counties to establish behavioral health authorities that plan and provide those same local public services. In this contract, the community services board, local government department with a policy-advisory community services board, or behavioral health authority named on page 15 of this contract will be referred to as the Board.
- c. Section 37.1-197.1 of the *Code of Virginia* states that, in order to provide comprehensive mental health, mental retardation, and substance abuse services within a continuum of care, the Board shall function as the single point of entry into the publicly funded mental health, mental retardation, and substance abuse services system. The Board fulfills this function for any person who is located in the Board's service area and needs mental health, mental retardation, or substance abuse services.
- d. Sections 37.1-198 and 248.1 of the *Code of Virginia* establish this contract as the primary accountability and funding mechanism between the Department and the Board.
- e. The Board is applying for the assistance provided under Chapter 10 or 15 of Title 37.1 of the *Code of Virginia* by submitting this performance contract to the Department in accordance with § 37.1-198 or 248.1 of the *Code of Virginia*.
- f. This contract establishes requirements and responsibilities for the Board and the Department that are not established through other means, such as statute or regulation. The General Requirements Document, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference, includes or incorporates by reference ongoing statutory, regulatory, policy, and other requirements that are not expected to change frequently and accordingly are not included in this contract.
- g. The Department and the Board enter into this performance contract for the purpose of funding services provided directly or contractually by the Board in a manner that ensures accountability to the Department and quality of care for consumers, and the Board and the Department agree as follows.

2. **Relationship:** The Department functions as the state authority for the public mental health, mental retardation, and substance abuse services system, and the Board functions as the local authority for that system. The relationship between and the roles and responsibilities of the Department and the Board are described more specifically in the current Partnership Agreement between the parties, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference. This contract shall not be construed to establish any employer-employee or principal-agent relationship between employees of the Board or its board of directors and the Department.

3. **Contract Term:** This contract shall be in effect for a term of one year, commencing on July 1, 2005 and ending on June 30, 2006.

FY 2006 Community Services Performance Contract

4. Scope of Services

- a. **Services:** Exhibit A of this contract includes all mental health, mental retardation, and substance abuse services, supported by the resources described in section 5 of this contract, that are provided or contracted by the Board. Services and certain terms used in this contract are defined in the current Core Services Taxonomy, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference.
- b. **Expenses for Services:** The Board shall provide to the extent practicable those services that are funded within the revenues and expenses set forth in Exhibit A and documented in the Board's financial management system. The Board shall distribute its administrative and management expenses across some or all of the three program areas on a basis that is in accordance with Uniform Cost Report principles, is auditable, and satisfies Generally Accepted Accounting Principles.
- c. **Continuity of Care:** In order to partially fulfill its responsibility in § 37.1-197.1 of the *Code of Virginia* to function as the single point of entry into the publicly funded services system in its service area, the Board shall follow the *Continuity of Care Procedures* that are included in the current General Requirements Document.

- 1.) **Coordination of Mental Retardation Waiver Services:** The Board shall provide case management services to consumers who are receiving services under the Medicaid Mental Retardation Home and Community-Based Waiver (MR Waiver). In this capacity and in order to receive payment for services from the Department of Medical Assistance Services (DMAS), the Board shall develop individualized services plans (ISPs) and submit them to the Department for preauthorization, pursuant to section 3.2.7 of the DMAS/DMHMRSAS Interagency Agreement (10-17-2000), under which the Department preauthorizes ISPs as a delegated function from the DMAS. As part of its specific case management responsibilities for individuals receiving MR Waiver services, the Board shall coordinate and monitor the delivery of all services to its consumers, including monitoring the receipt of services in a consumer's ISP that are provided by independent vendors, who are reimbursed directly by the DMAS, to the extent that the Board is not prohibited from doing so by such vendors (reference the *DMAS Mental Retardation Community Services Manual*, Chapters II and IV). The Board may raise issues regarding its efforts to coordinate and monitor services provided by independent vendors to the applicable funding or licensing authority, for example the Department, the DMAS, and the Virginia Department of Social Services.

In fulfilling this service coordination responsibility, the Board shall not restrict or seek to influence the consumer's choice among qualified service providers. This prohibition is not intended to restrict the ability of Board case managers to make recommendations, based on their professional judgment, to consumers regarding those available service options that best meet the terms of the consumers' ISPs and allow for the most effective coordination of services. This section does not, nor shall it be construed to, make the Board legally liable for the actions of independent vendors of MR Waiver services who are reimbursed directly by the DMAS.

- 2.) **Linkages with Primary Care:** When it arranges for the care and treatment of its consumers in hospitals, the Board shall assure its staff's cooperation with such hospitals, especially emergency rooms and emergency room physicians, in order to promote continuity of care for those consumers.
- 3.) **Coordination with Local Psychiatric Hospitals:** In the case of voluntary admissions, the Board, with the consumer's consent, shall coordinate an enrolled consumer's admission to and discharge from local psychiatric units and hospitals to assure appropriate use of these services in the least restrictive setting and to prevent inappropriate use of those hospitals.

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4.) **Access to Services:** The Board shall not require a consumer to receive case management services in order to receive other services that it provides, directly or contractually, unless it is permitted to do so by applicable regulations and the person is an adult with a serious mental illness, a child with or at risk of serious emotional disturbance, or an individual with mental retardation, substance dependence, or substance abuse, the person is receiving more than one other service from the Board, or a licensed clinician employed or contracted by the Board determines that such case management services are clinically necessary for the consumer.

5.) **PACT Criteria:** If the Board receives state general or federal funds for a Program of Assertive Community Treatment (PACT), it shall satisfy the following criteria:

- a.) Meet PACT state hospital bed use targets.
- b.) Prioritize providing services to consumers with serious mental illnesses who are frequent recipients of inpatient services or are homeless.
- c.) Achieve and maintain a caseload of 80 consumers after two years from the date of initial funding by the Department.
- d.) Participate in technical assistance provided by the Department.

If the Board receives state general or federal funds for a new PACT during the term of this contract or in the fiscal year immediately preceding that term, it also shall satisfy the following conditions:

- a.) Procure individual team training and technical assistance quarterly.
- b.) Meet bimonthly with other PACT programs (the network of CSB PACTs).

d. **Populations Served:** The Board shall provide needed services to adults with serious mental illnesses, children with or at risk of serious emotional disturbance, and individuals with mental retardation, substance dependence, or substance abuse to the greatest extent possible within the resources available to it for this purpose. In accordance with § 37.1-198 of the *Code of Virginia*, the Board shall report the unduplicated numbers of consumers with serious mental illnesses, serious emotional disturbance, at risk of serious emotional disturbance, mental retardation, substance dependence, or substance abuse that it serves during the term of this contract. These populations are defined in the current Core Services Taxonomy.

5. **Resources:** Exhibit A of this contract includes the following resources: state general funds and federal funds appropriated by the General Assembly and allocated by the Department to the Board; balances of unexpended or unencumbered state general and federal funds retained by the Board and used in this contract to support services; local matching funds required by § 37.1-199 of the *Code of Virginia* to receive allocations of state general funds; Medicaid Targeted Case Management, State Plan Option, and Mental Retardation Home and Community-Based Waiver fees and any other fees, as required by § 37.1-197 of the *Code of Virginia*; and any other revenues associated with or generated by the services shown in Exhibit A. The Board may choose to include only the minimum 10 percent local matching funds in the contract, rather than all local matching funds.

a. **Allocations of State General and Federal Funds:** The Department shall inform the Board of its allocations of state general and federal funds in a letter of notification. The Department may adjust allocation amounts during the term of this contract. The Commissioner or his designee shall communicate all adjustments to the Board in writing. Allocations of state general and federal funds shall be based on state and federal statutory and regulatory requirements, provisions of the current Appropriation Act, State Board policies, and previous allocation amounts. Allocations shall not be based on numbers of adults with serious mental illnesses, children with or at risk of serious emotional disturbance, or individuals with mental retardation, substance dependence, or substance abuse who receive services from the Board.

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- b. **Conditions on the Use of Resources:** The Department can attach service requirements or specific conditions that it establishes for the use of funds, separate from those established by other authorities, for example, applicable statutory or regulatory requirements such as licensing or human rights regulations or federal anti-discrimination requirements, only to the state general and federal funds that it allocates to the Board and to the 10 percent local matching funds that are required to obtain the Board's state general fund allocations.

6. Board Responsibilities

- a. **State Hospital Bed Utilization:** The Board shall identify or develop jointly with the Department mechanisms, such as the Discharge Protocols, Extraordinary Barriers to Discharge lists, and reinvestment and restructuring projects and activities, and employ these mechanisms collaboratively with state hospitals that serve it to manage the utilization of state hospital beds. Utilization will be measured by bed days received by consumers for whom the Board is the case management board.

b. **Quality of Care**

- 1.) **Clinical Consultation:** The Board may request the Department to provide professional consultations for clinically complex or difficult or medically complicated cases within the resources available for this purpose in the Department or its facilities and as permitted under 45 CFR § 164.506 (c) (1), when consumers or their legally authorized representatives have requested second opinions and with valid authorizations that comply with the Human Rights Regulations and the HIPAA Privacy Rule, if the Board is not able to provide those second opinions within its resources.
- 2.) **Quality Improvement and Risk Management:** The Board shall, to the extent practicable, develop and implement quality improvement processes that utilize consumer outcome measures, provider performance measures, and other data or participate in its local government's quality improvement processes to improve services, ensure that services are provided in accordance with current acceptable professional practice, and enable the ongoing review of all major areas of the Board's responsibilities under this contract.

The Board shall, to the extent practicable, develop, implement, and maintain, itself or in affiliation with other Boards, a quality improvement plan incorporating provider performance measures, consumer outcome measures, and human rights information. The Board shall, to the extent practicable, develop, implement, and maintain, itself or in affiliation with other Boards, a risk management plan or the Board shall participate in a local government's risk management plan. The Board shall work with the Department through the System Leadership Council to identify how the Board will address quality improvement activities.

3.) **Consumer Outcome and Provider Performance Measures**

- a.) **Measures:** Pursuant to § 37.1-198 of the *Code of Virginia*, the Board shall report the consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures in Exhibit C of this contract to the Department. These reporting requirements are contingent on the Department supplying any necessary specifications and software to the Board in time for the Board to make needed changes in its information systems.
- b.) **Individual Board Performance Measures:** The Department may negotiate specific, time-limited measures with the Board to address identified performance concerns or issues. When negotiated, such measures will be included as Exhibit D of this contract.

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c.) **Consumer Satisfaction Survey:** Pursuant to § 37.1-198 of the *Code of Virginia*, the Board shall participate in an assessment of consumer satisfaction in accordance with Exhibit C of this contract.

d.) **Substance Abuse Youth Surveys:** The Board shall work closely with community-based prevention planning groups, schools, and local governments to support and enable the administration of the Virginia Community Youth Survey and the Virginia Youth Tobacco Survey, which are mandated by federal funding sources and are necessary for continuation of federal block grant funding.

4.) **Program and Service Reviews:** The Department reserves the right to conduct or contract for reviews of programs or services provided or contracted by the Board under this contract to examine their quality or performance at any time as part of its monitoring and review responsibilities or in response to concerns or issues that come to its attention, as permitted under 45 CFR § 164.512 (a), (d), and (k) (6) (ii) and as part of its health oversight functions under § 32.1-127.1:03 (D) (6), § 37.1-198, and § 37.1-199 of the *Code of Virginia* or with a valid authorization by the consumer or his legally authorized representative that complies with the Human Rights Regulations and the HIPAA Privacy Rule.

c. Reporting Requirements

1.) **Board Responsibilities:** For purposes of reporting to the Department, the Board shall:

- a.) provide monthly, semi-annual, and annual Community Consumer Submission 2 (CCS 2) extracts that will report individual consumer characteristic and service data to the Department, as required by § 37.1-198.D of the *Code of Virginia*, the federal Substance Abuse and Mental Health Services Administration, and Part C of Title XIX of the Public Health Services Act – Block Grants, § 1943 (a) (3) and § 1971 and § 1949, as amended by Public Law 106-310, and as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (a) (1) and (d) and under § 32.1-127.1:03.D (6) of the *Code of Virginia* and as defined in the CCS 2 Data Element Definitions, which, by agreement of the parties, is hereby incorporated into and made a part of this contract by reference;
- b.) follow the current Core Services Taxonomy and the CCS 2 when responding to reporting requirements established by the Department;
- c.) complete the National Survey of Substance Abuse Treatment Services (N-SSATS), formerly the Uniform Facility Data Set (UFDS), annually that is used to compile and update the National Directory of Drug and Alcohol Abuse Treatment Programs and the on-line Substance Abuse Treatment Facility Locator;
- d.) report required Inventory of Mental Health Organizations data in accordance with federal requirements;
- e.) report Performance-Based Prevention System information on prevention services provided by the Board that are funded by the Substance Abuse Prevention and Treatment Performance Partnership Block Grant; and
- f.) supply information to the Department's Forensics Information Management System for consumers adjudicated not guilty by reason of insanity (NGRI), as required under § 37.1-198.D of the *Code of Virginia* and as permitted under 45 CFR §§ 164.506 (c) (1) and (3), 164.512 (d), and 164.512 (k) (6) (ii).

2.) **Routine Reporting Requirements:** The Board shall account for all services, revenues, and expenses accurately and submit reports to the Department in a timely manner using CARS-ACCESS, CCS 2, or other software provided by the Department. All reports shall be provided in the form and format prescribed by the Department. The Board shall provide the following information and meet the following reporting requirements:

FY 2006 Community Services Performance Contract

- a.) the types, amounts, and static capacities of services provided; expenses for services provided; and numbers of consumers served by core service and revenues received by source and amount by program area through the CCS 2 and CARS-ACCESS (semi-annually);
- b.) demographic characteristics of individual consumers in each program area through the CCS 2;
- c.) numbers of adults with serious mental illnesses, children with serious emotional disturbance, children at risk of serious emotional disturbance, and individuals with mental retardation, substance dependence, or substance abuse through the CCS 2;
- d.) consumer outcome and provider performance measures specified in Exhibit C;
- e.) community waiting list information for the Comprehensive State Plan that is required by § 37.1-48.1 of the *Code of Virginia*, as permitted under § 32.1-127.1:03 (D) (6) of the *Code of Virginia* and 45 CFR § 164.512 (d) and (k) (6) (ii) (when required);
- f.) State Facility Discharge Waiting List Data Base reports using ACCESS software supplied by the Department;
- g.) Federal Balance Report (October 31);
- h.) Total numbers of consumers served and expenses for the Discharge Assistance Project, MH Non-CSA Mandated Children and Youth Services, and MR Waiver Services through the CCS 2 and CARS-ACCESS (semi-annually);
- i.) PATH reports (semi-annually); and
- j.) Uniform Cost Report information through CARS-ACCESS (annually).

- 3.) **Subsequent Reporting Requirements:** The Board shall work with the Department to ensure that current data and reporting requirements are consistent with each other and the current Core Services Taxonomy, the CCS 2, and the Treatment Episode Data Set (TEDS) and other federal reporting requirements. The Board also shall work with the Department in planning and developing any additional reporting or documentation requirements beyond those identified in this contract to ensure that such requirements are consistent with the current Core Services Taxonomy, the CCS 2, and TEDS and other federal reporting requirements.

d. Discharge Assistance Project (DAP)

- 1.) **Board Responsibilities:** If it participates in any DAP funded by the Department, the Board shall manage, account for, and report DAP funds allocated to it as a restricted fund. The Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans (ISPs) to the Department for approval or preauthorization. The Board shall submit all DAP ISPs to the Department for information purposes and shall inform the Department whenever a consumer is admitted to or discharged from a DAP-funded placement.
- 2.) **Department Review:** The Board agrees to participate in any utilization review or utilization management activities conducted by the Department involving services provided under the DAP. Protected health information may be disclosed as permitted under 45 CFR §§ 164.506 (c) (1), (3), and (4) and 164.512 (k) (6) (ii).
- 3.) **Procedures:** The Board shall adhere to the DAP Procedures in the General Requirements Document if it participates in any DAP funded by the Department. If the Board's participation in the DAP causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.1-199 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the DAP funds, as authorized by that *Code* section and State Board Policy 4010.

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e. Individualized Services

- 1.) **Board Responsibilities:** If it participates in any individualized services, except the DAP, funded by the Department (e.g., the MH Non CSA-Mandated Child and Adolescent Services), the Board shall manage, account for, and report such individualized services funds allocated to it as a restricted fund. The Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans to the Department for preauthorization or approval.
 - 2.) **Department Review:** The Board agrees to participate in any utilization review or utilization management activities conducted by the Department involving services provided as individualized services. Protected health information may be disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii).
 - 3.) **Procedures:** The Board shall develop and maintain individualized services plans (ISPs), which shall be subject to review by the Department, for such individualized services; but the Board shall not be required to submit these ISPs to the Department for information purposes or for prior review or approval. The Board shall not be required to submit any reports for such individualized services outside of the semi-annual reporting required in section 6.c of this contract.
- f. **Compliance Requirements:** The Board shall comply with all applicable federal, state, and local laws and regulations, including those contained or referenced in the General Requirements Document and in Exhibit F of this contract, as they affect the operation of this contract. Any substantive change in the General Requirements Document, except changes in statutory, regulatory, policy, or other requirements or in other documents incorporated by reference in it, which changes are made in accordance with processes or procedures associated with those statutes, regulations, policies, or other requirements or documents, shall constitute an amendment of this contract, made in accordance with applicable provisions of the Partnership Agreement, that requires a new contract signature page, signed by both parties.

If any laws or regulations that become effective after the execution date of this contract substantially change the nature and conditions of this contract, they shall be binding upon the parties, but the parties retain the right to exercise any remedies available to them by law or other provisions of this contract. The Board shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by their compliance dates, except where the HIPAA requirements and applicable state law or regulations are contrary, and state statutes or regulations are more stringent, as defined in 45 CFR § 160.202, than the related HIPAA requirements. The Board shall follow the procedures and satisfy the requirements in the Performance Contract Process and the Administrative Performance Standards, contained in Exhibits E and I respectively of this contract. The Board shall document its compliance with §§ 37.1-195, -197, and -198 of the *Code of Virginia* in Exhibits G and H of this contract. If the Board's receipt of state facility reinvestment project state funds causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.1-199 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the state facility reinvestment project funds, as authorized by that *Code* section and State Board Policy 4010.

- g. **Regional Programs:** The Board shall manage or participate in the management of and account for and report on regional programs in accordance with the Regional Program Procedures in Exhibit J of this contract. If the Board's participation in a regional program, as defined in the Procedures, causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.1-199 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the funds for that regional program, as authorized by that *Code* section and State Board Policy 4010. The Board agrees to participate in any utilization review or utilization management activities conducted

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by the Department involving services provided through a regional program. Protected health information may be disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii).

7. Department Responsibilities

- a. Funding:** The Department shall disburse the state general funds displayed in Exhibit A, subject to the Board's compliance with the provisions of this contract, prospectively on a semi-monthly basis to the Board. Payments may be revised to reflect funding adjustments. The Department shall disburse federal grant funds that it receives to the Board in accordance with the requirements of the applicable federal grant and, wherever possible, prospectively on a semi-monthly basis. The Department shall make these payments in accordance with Exhibit E of this contract.
- b. State Facility Services**
 - 1.) The Department shall make state facility inpatient services available, if appropriate, through its state hospitals and training centers, when individuals located in the Board's service area are in need of such services.
 - 2.) The Department shall track, monitor, and report on the Board's utilization of state hospital beds and provide data to the Board about consumers from its service area who are served in state hospitals as permitted under 45 CFR §§ 164.506 (c) (1), (2), and (4) and 164.512 (k) (6) (ii). The Department shall post state hospital bed utilization by the Board for all types of beds (adult, geriatric, child and adolescent, and forensic) on its Internet web site for information purposes.
 - 3.) The Department shall manage its state hospitals and training centers to support service linkages with the Board, including adherence to the applicable provisions of the *Continuity of Care Procedures* and the *Discharge Planning Protocols*. The Department shall assure that its state hospitals and training centers use teleconferencing technology to the extent practicable and whenever possible to facilitate the Board's participation in treatment planning activities and the Board's fulfillment of its discharge planning responsibilities for its consumers in state facilities.
 - 4.) The Department shall involve the Board, as applicable and to the greatest extent possible, in collaborative planning activities regarding the future role and structure of state hospitals and training centers.
- c. Quality of Care**
 - 1.) The Department with participation from the Board shall identify consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures for inclusion in this contract, pursuant to § 37.1-198 of the *Code of Virginia*, and shall collect information about these measures.
 - 2.) The Department may provide professional consultations to the Board upon request for clinically complex or difficult or medically complicated cases within the resources available for this purpose in the Department or its facilities and as permitted under 45 CFR § 164.506 (c) (1), when consumers or their legally authorized representatives have requested second opinions and with valid authorizations that comply with the Human Rights Regulations and the HIPAA Privacy Rule, if the Board is not able to provide those second opinions within its resources.
- d. Reporting Requirements**
 - 1.) The Department shall work with representatives of Boards, including the Virginia Association of Community Services Boards' Data Management Committee (VACSB DMC), to ensure that current data and reporting requirements are consistent with each

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other and with the current Core Services Taxonomy, the Community Consumer Submission 2 (CCS 2), and TEDS and other federal reporting requirements. The Department also shall work with representatives of Boards, including the VACSB DMC, in planning and developing any additional reporting or documentation requirements beyond those identified in this contract to ensure that such requirements are consistent with the current Core Services Taxonomy, the CCS 2, and TEDS and other federal reporting requirements.

- 2.) The Department shall collaborate with representatives of the Boards, including the VACSB DMC, in the implementation and modification of the Community Consumer Submission 2 (CCS 2), which reports individual consumer characteristic and service data that is required under § 37.1-198.D of the *Code of Virginia*, the federal Substance Abuse and Mental Health Services Administration, and Part C of Title XIX of the Public Health Services Act – Block Grants, §1943 (a) (3) and § 1971 and § 1949, as amended by Public Law 106-310, to the Department and is defined in the CCS 2 Data Element Definitions. The Department will receive and use individual consumer characteristic and service data disclosed by the Board through the CCS 2 as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (a) (1) and under § 32.1-127.1:03.D (6) of the *Code of Virginia* and shall implement procedures to protect the confidentiality of this information pursuant to § 37.1-197.A.16 and B.16 of the *Code of Virginia* and HIPAA.
- 3.) The Department shall work with representatives of the Boards, including the VACSB DMC, to reduce the number of data elements required whenever this is possible.
- 4.) The Department shall ensure that all surveys and requests for data have been reviewed for cost effectiveness and developed through a joint Department and Board process.

e. Discharge Assistance Project

- 1.) **Department Responsibilities:** If the Board participates in any DAP funded by the Department, the Department shall fund and monitor the DAP as a restricted fund. The Department agrees that the Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans to the Department for preauthorization or approval. The Department shall maintain a database about DAP consumers, including admissions to and discharges from the DAP.
- 2.) **Department Review:** The Department may conduct utilization review or utilization management activities involving services provided by the Board under the DAP. If such activities involve the disclosure of protected health information, the information may be used and disclosed as permitted under 45 CFR §§ 164.506 (c) (1), (3), and (4) and 164.512 (k) (6) (ii).
- 3.) **Procedures:** The Department shall adhere to the DAP Procedures in the General Requirements Document. If the Board's participation in the DAP causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.1-199 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the DAP funds, as authorized by that *Code* section and State Board Policy 4010.

f. Individualized Services

- 1.) **Department Responsibilities:** If the Board participates in any individualized services, except DAP, funded by the Department (e.g., the MH Non-CSA Mandated Child and Adolescent Services), the Department shall fund and monitor those services as a restricted fund. The Department agrees that the Board shall be responsible for ensuring the effective utilization of those funds, without submitting individualized services plans to the Department for preauthorization, approval, or information.

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2.) Department Review: The Department may conduct utilization review or utilization management activities involving services provided by the Board as individualized services. If such activities involve the disclosure of protected health information, the information may be used and disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii).

- g. Compliance Requirements:** The Department shall comply with all applicable state and federal statutes and regulations, including those contained or referenced in the General Requirements Document and in Exhibit F of this contract, as they affect the operation of this contract. Any substantive change in the General Requirements Document, except changes in statutory, regulatory, policy, or other requirements or in other documents incorporated by reference in it, which changes are made in accordance with processes or procedures associated with those statutes, regulations, policies, or other requirements or documents, shall constitute an amendment of this contract, made in accordance with applicable provisions of the Partnership Agreement, that requires a new contract signature page, signed by both parties.

If any laws or regulations that become effective after the execution date of this contract substantially change the nature and conditions of this contract, they shall be binding upon the parties, but the parties retain the right to exercise any remedies available to them by law or other provisions of this contract. The Department and its mental health and mental retardation facilities shall comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by their compliance dates, except where the HIPAA requirements and applicable state law or regulations are contrary, and state statutes or regulations are more stringent, as defined in 45 CFR § 160.202, than the related HIPAA requirements. If the Board's receipt of state facility reinvestment project funds causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.1-199 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the state facility reinvestment project funds, as authorized by that Code section and State Board Policy 4010.

- h. Communication:** The Department shall provide technical assistance and written notification regarding changes in funding source requirements, such as regulations, policies, procedures, and interpretations, to the extent that those changes are known to the Department. The Department shall resolve, to the extent practicable, inconsistencies in state agency requirements that affect requirements in this contract. The Department shall respond in a timely manner to written correspondence from the Board that requests information or a response.
- i. Regional Programs:** The Department may conduct utilization review or utilization management activities involving services provided by the Board through a regional program. If such activities involve the disclosure of protected health information, the information may be used and disclosed as permitted under 45 CFR §§ 164.506 (c) (1) and (3) and 164.512 (k) (6) (ii). If the Board's participation in a regional program, as defined in the Regional Program Procedures in Exhibit J of this contract, causes it to be out of compliance with the 10 percent local matching funds requirement in § 37.1-199 of the *Code of Virginia*, the Department shall grant an automatic waiver of that requirement, related to the funds for that regional program, as authorized by that Code section and State Board Policy 4010.

- 8. Subcontracting:** The Board may subcontract any of the requirements in this contract. The Board shall remain fully and solely responsible and accountable for meeting all of its obligations and duties under this contract, including all services, terms, and conditions, without regard to its subcontracting arrangements. Subcontracting must comply with applicable statutes, regulations, and guidelines, including the Virginia Public Procurement Act. All subcontracted activities shall be formalized in written contracts between the Board and subcontractors. The

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Board agrees to provide copies of such contracts or other documents to the Department upon request. The Board shall satisfy the subcontracting provisions in the General Requirements Document.

9. Terms and Conditions

- a. **Availability of Funds:** The Department and the Board shall be bound by the provisions of this contract only to the extent of the funds available or that may hereafter become available for the purposes of the contract.
- b. **Compliance:** The Department may utilize a variety of remedies, including but not limited to requiring a corrective action plan, delaying payments, and terminating the contract, to assure Board compliance with this contract. Specific remedies, described in Exhibit I of this contract, may be taken if the Board fails to satisfy the reporting requirements in this contract.
- c. **Disputes:** Resolution of disputes arising from Department contract compliance review and performance management efforts or from actions by the Board related to this contract may be pursued through the dispute resolution process in section 9.f, which may be used to appeal only the following conditions:
 - 1) reduction or withdrawal of state general or federal funds, unless funds for this activity are withdrawn by action of the General Assembly or federal government, or adjustment of allocations or payments pursuant to section 5 of this contract;
 - 2) termination or suspension of the performance contract, unless funding is no longer available;
 - 3) refusal to negotiate or execute a contract modification;
 - 4) disputes arising over interpretation or precedence of terms, conditions, or scope of the performance contract;
 - 5) determination that an expenditure is not allowable under this contract; and
 - 6) determination that the performance contract is void.
- d. **Termination**
 - 1) The Department may terminate this contract immediately, in whole or in part, at any time during the contract period if funds for this activity are withdrawn or not appropriated by the General Assembly or are not provided by the federal government. In this situation, the obligations of the Department and the Board under this contract shall cease immediately. The Board and the Department shall make all reasonable efforts to ameliorate any negative consequences or effects of contract termination on consumers.
 - 2) In accordance with § 37.1-198 of the *Code of Virginia*, the Department may terminate all or a portion of this contract, after unsuccessful use of the remediation process described in section 9.e and after affording the Board an adequate opportunity to use the dispute resolution process described in section 9.f of this contract. A written notice specifying the cause must be delivered to the Board's board chairman and executive director at least 75 days prior to the date of actual termination of the contract. In the event of contract termination under these circumstances, only payment for allowable services rendered by the Board shall be made by the Department.
- e. **Remediation Process:** The remediation process mentioned in § 37.1-198 of the *Code of Virginia* is an informal procedure that shall be used by the Department and the Board to address a particular situation or condition identified by the Department or the Board that may, if unresolved, result in termination of the contract, in accordance with the provisions of section 9.d of this contract. The details of this remediation process shall be developed by

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the parties and added as an exhibit of this contract. This exhibit shall describe the situation or condition and include the performance measures that shall document a satisfactory resolution of the situation or condition.

- f. **Dispute Resolution Process:** Disputes arising from any of the conditions in section 9.c shall be resolved using the following process.
- 1) Within 15 days of the Board's identification or receipt of a disputable action taken by the Department or of the Department's identification or receipt of a disputable action taken by the Board, the party seeking resolution of the dispute shall submit a written notice to the Department's Director of Community Contracting, stating its desire to use the dispute resolution process. The written notice must describe the condition, nature, and details of the dispute and the relief sought by the party.
 - 2) The Director of Community Contracting shall review the written notice and determine if the dispute falls within the conditions listed in section 9.c. If it does not, the Director of Community Contracting shall notify the party in writing within seven days of receipt of the written notice that the dispute is not subject to this dispute resolution process. The party may appeal this determination to the Commissioner in writing within seven days of its receipt of the Director's written notification.
 - 3) If the dispute falls within the conditions listed in section 9.c, the Director of Community Contracting shall notify the party within seven days of receipt of the written notice that a panel will be appointed within 15 days to conduct an administrative hearing.
 - 4) Within 15 days of notification to the party, a panel of three or five disinterested individuals shall be appointed to hear the dispute. The Board shall appoint one or two members; the Commissioner shall appoint one or two members; and the appointed members shall appoint the third or fifth member. Each panel member will be informed of the nature of the dispute and be required to sign a statement indicating that he has no interest in the dispute. Any person with an interest in the dispute shall be relieved of panel responsibilities and another person shall be selected as a panel member.
 - 5) The Director of Community Contracting will contact the parties by telephone and arrange for a panel hearing at a mutually convenient time, date, and place. The panel hearing shall be scheduled not more than 15 days after the appointment of panel members. Confirmation of the time, date, and place of the hearing will be communicated to all parties at least seven days in advance of the hearing.
 - 6) The panel members shall elect a chairman and the chairman shall convene the panel. The party requesting the panel hearing shall present evidence first, followed by the presentation of the other party. The burden shall be on the party requesting the panel hearing to establish that the disputed decision or action was incorrect and to present the basis in law, regulation, or policy for its assertion. The panel may hear rebuttal evidence after the initial presentations by the Board and the Department. The panel may question either party in order to obtain a clear understanding of the facts.
 - 7) Subject to provisions of the Freedom of Information Act, the panel shall convene in closed session at the end of the hearing and shall issue written recommended findings of fact within seven days of the hearing. The recommended findings of fact shall be submitted to the Commissioner for a final decision.
 - 8) The findings of fact shall be final and conclusive and shall not be set aside by the Commissioner unless they are (1) fraudulent, arbitrary, or capricious; (2) so grossly erroneous as to imply bad faith; (3) in the case of termination of the contract due to failure to perform, the criteria for performance measurement are found to be erroneous, arbitrary, or capricious; or (4) not within the Board's purview.

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- 9) The final decision shall be sent by certified mail to both parties no later than 60 days after receipt of the written notice from the party invoking the dispute resolution process.
- 10) Multiple appeal notices shall be handled independently and sequentially so that an initial appeal will not be delayed by a second appeal.
- 11) The Board or the Department may seek judicial review of the final decision as provided in § 2.2-4365 of the *Code of Virginia* in the Circuit Court for the City of Richmond within 30 days of receipt of the final decision.

- g. Contract Amendment:** This contract, including all exhibits and incorporated documents, constitutes the entire agreement between the Department and the Board. The services identified in the Exhibit A of this contract may be revised in accordance with the performance contract revision instructions, contained in Exhibit E of this contract. Other provisions of this contract may be amended only by mutual agreement of the parties, in writing and signed by the parties hereto.
- h. Liability:** The Board shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance of this contract. The Board shall obtain and maintain sufficient liability insurance to cover claims for bodily injury and property damage and suitable administrative or directors and officers liability insurance. These responsibilities may be discharged by means of a proper and sufficient self-insurance program operated by the state or a city or county government. The Board shall provide a copy of any such policy or program to the Department upon request. This contract is not intended to, and does not, create by implication or otherwise any basis for any claim or cause of action by a person or entity not a party to this contract, arising out of any claimed violation of any provision of this contract, nor does it create any claim or right on behalf of any individual to services or benefits from the Board or the Department.
- i. Severability:** Each paragraph and provision of this contract is severable from the entire performance contract, and the remaining provisions shall nevertheless remain in full force and effect if any provision is declared invalid or unenforceable.

10. Areas for Future Resolution: On an ongoing basis, the Board and the Department agree to work together to identify and resolve barriers and policy and procedural issues that interfere with the most effective and efficient delivery of public services. This section identifies issues and topics that the Board and the Department agree to work on collaboratively during the term of this contract in order to resolve them during that period or later, if necessary. Issues and topics may be added at any time by mutual agreement through amendment of this contract. The Board or representatives of the Board and the Department will establish work groups where appropriate to address these issues and topics. The Department and the Board also may address issues and topics through the System Leadership Council, which is described in the Partnership Agreement, and the System Operations Team.

- a. Evidence-Based or Best Clinical Practices:** Identify evidence-based practices or best clinical practices that will improve the quality of mental health, mental retardation, or substance abuse services and address the service needs of individuals with co-occurring disorders and develop strategies for the implementation of these practices to the extent practicable.

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11. Signatures: In witness thereof, the Department and the Board have caused this performance contract to be executed by the following duly authorized officials.

Virginia Department of Mental Health,
Mental Retardation and Substance
Abuse Services

Central Virginia
Community Services
Board

By: _____

Name: James S. Reinhard, M.D.
Title: Commissioner

Date: _____

By: Lula R. Bowyer

Name: Lula Bowyer
Title: Chairman of the Board

Date: 6-22-05

By: Augustine J. Fagan

Name: Augustine J. Fagan
Title: Executive Director

Date: 6-22-05